IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 9925 OF 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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VAGHARI DESAIBHAI BHABHARBHAI @ VIDABHAI - Petitioner(s)
Versus
ISHWARBHAI VAGHJIBHAI
PATEL @ DESAIBHAI & ORS. - Respondent(s)

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Appearance :
Shri A.R. Majmudar for Petitioner(s).
None for Respondent No.1.
Shri Hukum Singh, Asst. Government Pleader for Respondent Nos.2 & 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 16/03/2007

ORAL JUDGMENT

1. The short facts necessary for disposal of the petition are that the petitioner, who happened to be in possession of land bearing Block

No.39 admeasuring 0.27.32 Hectares, which was allotted to him by the State Government, purchased some agricultural land of Block No.38 admeasuring 0.12.14 Hectares by a registered Sale Deed on 11th December, 1986. On the basis of the said Sale Deed, Entry No.91 was made and the same was certified. Since 1987, the land continued in the name of the petitioner. The respondent No.3, somewhere in the year 1992, registered Case No. CON/287/92 on the ground that the sale transaction was creating a fragment. The only question, on which *suo motu* powers were required to be exercised, was that whether a fragment was created or not. The petitioner appeared before respondent No.3 and submitted that as he was the owner of the adjoining agricultural land, any sale in his favour was not creating any fragment and there was no breach of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 ["the Fragmentation Act" for short].

1.1 The learned Deputy Collector, *vide* an Order dated 31st March, 1994, passed in Case No. CON/287/92, held that there was no breach of Fragmentation Act, but, he did not approve the sale, holding *inter alia* that the nature of plot of Block Nos.38 and 39 were different. He, accordingly, cancelled the sale and imposed fine of Rs.250/- on the original owner. The order was taken up in Appeal No. SRD/CON/KHD/19/94, but, the learned Additional Principal Secretary (Appeals), Revenue Department, by his Order dated 11th October, 1995, dismissed the appeal. The petitioner, being aggrieved by the said order, is before this Court.

2. Shri Majmudar, learned Counsel for the petitioner, submits that the *suo motu* powers could only be exercised to the extent of the notice and not beyond that. According to him, the Deputy Collector was of the opinion that the sale in favour of the petitioner was not creating a

fragment and the moment, he came to the conclusion that there was no breach of Fragmentation Act, he should have dropped the proceedings instead of entering into the controversy that the nature of the land were different. He also submits that the question of old tenure and new tenure was for the first time raised by the learned appellate forum, less realising that such notice was never given to the petitioner.

3. Shri Hukum Singh, learned Counsel for the State, on the other hand, submits that as the nature of the tenures were different, the petitioner could not be allowed to purchase the old tenure if he was possessed of new tenure because such lands could not be consolidated.

4. After hearing the parties, I am of the considered opinion that the orders passed by both the authorities cannot be allowed to stand. If the authorities were of the opinion that the petitioner's sale was required to be rejected because the land after purchase could not be consolidated with the new tenure, then, such notice ought to have been given to the petitioner.

5. From a perusal of the order passed by the learned Deputy Collector, it would only appear that the matter relating to breach of the Fragmentation Act was only submitted before him. In a case of *suo motu* revision, the authority is required to exercise the powers within a reasonable time and with due care and caution. In the present matter, the entries were certified in the year 1986 and the *suo motu* action was taken in the year 1992, that is, almost after six years. A catena of judgements would say that in cases like this, the authority should not exercise the *suo motu* revisional powers after a lapse of two/three years. Even on that ground, the Deputy Collector was not entitled to take up the matter in *suo motu* revision.

6. For the reasons aforesaid, the petition is allowed. The orders passed by the Deputy Collector and confirmed by the Additional Principal Secretary (Appeals) are quashed. Rule is made absolute. No costs.

[R.S.Garg, J.]

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